



TOWN OF WEARE
PLANNING BOARD
ZONING BOARD OF ADJUSTMENT
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Office Hours:
Monday
Tuesday
Thursday
8 AM – 4:30 PM

**ZONING BOARD OF ADJUSTMENT
MINUTES
MAY 19, 2004
(Approved as amended 6/3/04)**

PRESENT: Tim Galvin, Chairman; Forrest Esenwine, Vice Chairman; Leon Methot; June Purington; Matt Pelletier, Alternate; Naomi Bolton, Land Use Coordinator.

GUESTS: Mike Pelletier; John Cronin

I. CALL TO ORDER:

Chairman Tim Galvin called the meeting to order at 7:30 PM at the Weare Town Office. Chairman Galvin appointed Matt Pelletier as a voting member for tonight's meeting.

II. PUBLIC HEARINGS:

Case #0904 153 Concord Stage, LLC (Continued Hearing)
Administrative Appeal, Interim Growth Management Ordinance
Applicant is requesting permission for an additional number of building permits beyond the amount allowed in the interim growth management ordinance.
Tax Map 401-004 Collins Landing Road (Private)

Chairman Galvin read the following opinion:

The appellant, 153 Concord Stage, LLC, Tech Built 153, and Michael Pelletier appeal the finding of the Town of Weare Building Inspector, Planning Board, and Building Department with respect to the denial of building permits under the restrictions imposed in the Interim Growth Management Ordinance (IGMO) as enacted by the Town of Weare March 10, 2004. The appellant brings this action in front of the Town of Weare Zoning Board of Adjustment in relation to RSA 674:21.

Counsel for the appellant outlined argument for reversal based upon three points; vestige, impact fee's, and a memo approved and published by the Town of Weare Board of Selectmen titled "Interoffice Guidelines to Distribute Permits Under the Interim Ordinance". Counsel's arguments are predicated upon NH SJC rulings in Henry Torromeo v. Town of Fremont & Monahan-Fortin Properties, LLC v.

Town of Hudson. Torromeo relative to enforceableness of the IGMO and Monahan with respect to the issue of impact fees. Additionally, Counsel cites 674:39 with respect to the appellants' project being vested.

This board's interpretation of applicability of Torromeo in this matter is inappropriate in that the decision of the NHSJC deals specifically with the question of constitutionality of the growth ordinance. In Torromeo the hinging question pertained to the defendant town legally adopting a capital improvement program (CIP), which is a prerequisite to the adoption of a growth control ordinance. In the case before this board, the Town of Weare has met the requirements of the CIP prerequisite that has properly resulted in the Town of Weare Master Plan and the resulting Interim Growth Management Ordinance (IGMO).

This board finds the applicability of Monahan-Fortin inappropriate in that the decision of the NHSJC was specific to the double jeopardy of the implementation and application of the restrictions of the growth management ordinance -and- impact fees. The court's decision cites RSA674:21, V (h). In that the Town of Weare has never enacted an ordinance specific to Impact Fee's the protection of the courts decision relative to application of both the growth ordinance and impact fee's is mute. RSA674:21 V(h) could have relevance to Counsel's argument on the point of "vesting".

With respect to "Vesting", the Town of Weare Zoning Board of Adjustment has, sometime between January 2001 and the date of this appeal, acknowledged as a matter of record, the Collins Landing Project as "vested" on the condition the developer (this appellant) developed the site according to the submitted and approved site plan dated 1987 as was filed with the Hillsboro County Registry of Deeds and the Town of Weare.

Building permits for a 5-unit structure were issued by interim Code Enforcement Officer (CEO) Jack Dever on March 8, 2004. The proposed location of the particular structure was not confirmed at the time. However, the interim CEO advised the applicant that this was the limit of permits that would be allowed, based on the interim CEO's perception that the project was not exempt from the IGMO. This position, asserted by the interim CEO is not consistent with the Town's continued understanding that the Collins Landing project is a permanently vested subdivision pursuant to RSA 674:39. As such, the subdivision is exempt from subsequent changes in zoning. The IG MO is a subsequent change in the zoning and, accordingly, Collins Landing is exempt from that change and we may not limit the number of permits that it draws in any given year based on that fact.

That being said, however, it is also our opinion that your vested right entitles you to construct the approved project in a manner that is consistent with the recorded plan **ONLY**. We have subsequently learned that the present construction does NOT conform to the plan and that the appellant is seeking to construct a five-unit

project in a location that called for a three-unit project as well as making other changes that relate to the corresponding infrastructure.

If the town's position is correct, therefore, then Collins Landing must cease and desist this construction until they either modify the plan or present applications to construct in accordance with the recorded plan. In anticipation of the next question, it is important to know that the modifications to the plan may constitute significant change to the original proposal to jeopardize the vested status.

Therefore, the ZBA overrules the CEO's position with regard to the number of permits and the application of the IGMO, and makes no decision with regard to the construction because that issue is not before us.

Forrest Esenwine moved that the opinion as just read be approved by the Zoning Board for this case #0904, Leon Methot seconded the motion, unanimous vote (Methot, Purington, Pelletier, Galvin, Esenwine).

Chairman Galvin then closed this hearing at 7:40 PM.

III. ADJOURNMENT:

As there was no further business to come before the board, Forrest Esenwine moved to adjourn at 7:41 PM, June Purington seconded the motion, all in favor.

Respectfully submitted,

Naomi L. Bolton
Land Use Coordinator